



An  
Bord  
Pleanála

## Inspector's Report

### ABP-313407-22

<b>Development</b>	Retention of Stud Farm within confines of existing paddock and all associated site development works.
<b>Location</b>	Mayfield Stud, Mayfield, Monasterevin, Co. Kildare.
<b>Planning Authority</b>	Kildare County Council
<b>Planning Authority Reg. Ref.</b>	22159
<b>Applicant(s)</b>	Christopher Donoghue
<b>Type of Application</b>	Retention.
<b>Planning Authority Decision</b>	Refuse
<b>Type of Appeal</b>	First Party v Refusal
<b>Appellant(s)</b>	Christopher Donoghue
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	8th February 2023.
<b>Inspector</b>	Lucy Roche

## **1.0 Site Location and Description**

- 1.1. The appeal site is located adjacent and to the south of the M7 Motorway, approx. 200 metres east of the Junction 14 Services at Mayfield, and c2.5km east of the settlement of Monasterevin.
- 1.2. Access to the site is by way of a private access road, located between the M7 slip road and the service station. The road is accessed via the R445 regional road, it is approx. 470 metres long and runs parallel to the motorway. The road serves two dwellings (including the applicant's detached two-storey house) and the agricultural facilities subject of the application. The applicants house and farmyard are located behind gates which are located approx. 330 metres from the junction with the public road (R445). The ground level of the site is higher than that of the adjacent motorway and there is a hedge line between the site and motorway. The primary land use in the area is agricultural.
- 1.3. The site has a stated area of 0.769ha

## **2.0 Proposed Development**

- 2.1. Permission has been sought for the retention of existing stud farm enterprise, to include 2 No. covered exercise rings, stable units, straw/hay storage shed, hardcore yard, access road, entrance, surface water drainage and all other associated site development works, within confines of existing paddock.
- 2.2. There are 4 no. structures subject to this retention application, the combined floor area of which is cited as 1,262sqm. The stables building has a stated floor area of 760sqm with a maximum indicated height of 4.0 metres. It is of a blockwork construction with a render external finish. The storage shed has a stated floor area of 230sqm with an indicated maximum height of 6.8 metres. It is externally finished with blockwork and metal cladding. Both exercise rings (identified as sheds B and C on the site layout plans) have a stated floor area of 136sqm, they are externally finished in blockwork with metal cladding to roof. Shed B has an indicated maximum height of 4.5 metres, while shed C has an indicated maximum height of 4.8 metres.

### 3.0 Planning Authority Decision

#### 3.1. Decision

Kildare County Council did by order dated the 6<sup>th</sup> of April 2022 decide to refuse retention permission for development at Mayfield Stud, Mayfield, Monasterevin, Co. Kildare, for one reason as follows:

*The development to be retained, is located within the 91-metre building line requirement from the edge of the carriageway of the M7 Motorway Route, as outlined in Table 17.8 Building Lines from Public Roads and Section 17.7.2 Building Lines in the Kildare County Development Plan 2017 – 2023. The development would therefore materially contravene development plan policy in relation to building line set back from motorway routes, would act as a precedent to further such development elsewhere in the County, and would therefore be contrary to the proper planning and sustainable development of the area.*

#### 3.2. Planning Authority Reports

##### 3.2.1. Planning Reports

The Planning Officer's report was the basis for the decision. The Planning Officer concluded that, having regard to the TII and Transportation Section reports received, the development was contrary to Section 17.7.2 and Table 17.8 of the Kildare County Development Plan 2017-2023.

##### 3.2.2. Other Technical Reports

Kildare MD: No objection subject to condition

Roads, Transportation and Public Safety –

A refusal is recommended as the development would contravene the policy set out in Section 17.7.2 and Table 17.8 of the Kildare County Development Plan 2017-2023 that requires the building line to be 91.0 metres from the nearest edge of the motorway

Water Services: No objection subject to condition

EHO: No objection

Fire Services: No objection

NOTE: The report of the Planning Officer also references reports from environment section of Kildare County Council's Environment Section and National Roads Office. These reports are not on file but are available on Kildare County Council's website.

### 3.3. Prescribed Bodies

Transport Infrastructure Ireland: Recommends refusal as it considers that the proposed development if approved, would create an adverse impact on the national road and associated junction and would, in the Authority's opinion, be at variance with national policy.

Irish Water: No objection subject to condition

### 3.4. Third Party Observations

None

## 4.0 Planning History

### 4.1. The relevant planning history is as follows:

**APB 306109-19** - Permission refused in 2020 for the retention of agricultural shed/stables, agricultural storage shed, lunge ring and walking ring, all using the existing vehicular entrance and all associated site works. Retention permission was refused for one reason – *The structures to be retained are located within 91 metres of the M7 Motorway. The development would therefore contravene the provisions of Chapter 17.7.2 (Building Lines) of the Kildare County Development Plan 2017-2023 etc*

**KCC Reg. Ref. 19/361** – Permission was granted in 2019 for (a) agricultural shed/stables, lunge ring and walking ring and (b) for the removal/demolition of an existing storage building, stables building, lunge ring and walking ring using the

existing vehicular entrance and all associated site works. Condition 12 of this grant of permission required that **all** existing structures on site be demolished and removed from the site within six months of completion of the proposed replacement structures.

**KCC Reg. Ref. 17/1304** – Permission was refused in 2018 for the retention of a lunging ring, horse walker, stable block, storage building, effluent treatment system and percolation area, existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

**KCC Reg. Ref. 16/506** – Permission was refused in 2016 for a temporary ten year retention permission for stables, lunge ring, walking ring, storage building and an effluent treatment system with percolation area using existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

**KCC Reg. Ref. 15/484** – Permission was refused in 2015 for the retention of stables, lunge ring, walking ring, storage building and effluent treatment system with percolation area using an existing vehicular entrance and all associated site works because the development is located within the 91 metres building line setback of the M7 motorway.

**KCC Reg. Ref. 11/456** – Permission was refused in 2011 for the retention of stables, lunge ring, walking ring, storage building with effluent treatment system with percolation area using an existing vehicular entrance and all associated site works because (i) the development is located within the 91 metres building line setback of the M7 motorway, (ii) the development, by itself or by the precedent it would set, would inhibit future upgrading proposals for the motorway, would result in a potential traffic hazard and (iii) in the absence of adequate information the planning authority was not satisfied that the applicant had established the treatment system and percolation area would not present a risk of pollution to groundwater and surface water and would not be prejudicial to public health.

**KCC Reg. Ref. 03/251** – Permission was refused in 2003 for the retention of stables, lunge ring, walking ring and paper storage building with septic tank and effluent treatment system and percolation area because (i) the development is located within

the 91 metres building line setback of the Kildare Town by-pass motorway and (ii) the development could, by itself or the precedent it would set, lead to a proliferation of similar-type development, inhibit proposals for future upgrading of the road etc.

## **5.0 Policy Context**

### **5.1. Development Plan**

5.1.1. The application was assessed by Kildare County Council in accordance with the policies and objectives of the Kildare County Development Plan 2017-2023. The Kildare County Development Plan 2023-2029 was adopted by Kildare County Council on the 9th of December 2022 and came into effect on the 28<sup>th</sup> of January 2023. I have assessed the proposal under the provisions of the operative Development Plan, namely the Kildare County Development Plan 2023-2029.

#### **5.1.2. Chapter 9 – Our rural Economy - Section 9.5. Equine**

It is the policy of the Council to:

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|-------|---|
| RD P3 | Support equine related activities of an appropriate size at suitable locations in the county.   |
| RD P4 | Support and encourage the continued development of a distinguished bloodstock and equine industry in the County, including breeding and training, and seek to ensure appropriate environmental conditions for equine operations, insofar as is practicable. |

It is an objective of the Council to:

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| RD O16 | Ensure that equine based developments are located on suitable and viable landholdings and are subject to normal planning, siting, and design considerations. |
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#### **5.1.3. Chapter 15 Development Management Standards - Section 15.7.7 Building Lines**

- Where developments are permitted in rural areas along National, Regional and County Roads it is the policy of the Council to require compliance with the minimum setbacks as set out in Table 15.7. All measurements are taken from the nearest edge of the road surface. In situations where there is an established building line, new houses, where appropriate, shall conform to the established building line.
- Table 15.7 – Building Lines from Public roads in Rural Areas

Motorways	91m
National Primary	91m
National Secondary	91m
Regional Roads	31m
County Road	18.5m

Where developments are proposed within an area adjacent to a National or Regional Road, the Planning Authority will have regard to the requirements of Transport Infrastructure Ireland and The National Roads Design Office in relation to Building Lines.

## 5.2. Natural Heritage Designations

The closest Natura 2000 site is River Barrow and River Nore SAC approx. 3.8km to the southwest. The closest heritage area is Grand Canal pNHA approx. 3.5km to the northwest.

## 5.3. EIA Screening

Having regard to the type of development which is not a class of development for the purposes of EIA and having regard to the nature the proposed development, which comprises the retention of an existing stud farm enterprise, the nature of the receiving environment, and proximity to the nearest sensitive location, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## **6.0 The Appeal**

### **6.1. Grounds of Appeal**

This is a first party appeal lodged by the applicant Christopher Donoghue against the decision of Kildare County Council to refuse retention permission for a stud farm enterprise at Mayfield, Monasterevin, Co. Kildare. The grounds of appeal can be summarised as follows:

- The applicant has been involved in the bloodstock / equine industry at Mayfield Stud for over 40 years. He is now considering retiring but is unable to plan with disposal of his property or transfer to other family members because of Kildare County council's recent decisions.
- The Stud farm was in place c30 years before the M7 (Kildare-by-pass) was constructed, and with a setback in excess of 100 meters from the then N7 National Primary Route.
- During the CPO consolation process, an agreement was reached between the applicant and Kildare County Council which included a financial settlement, accommodation works and agreement by the applicant not to object to the proposed scheme.
- The subject development was in place well before the 2017-2023 Kildare County Development Plan was in place
- Reference to this development acting as a precedent for other developments to contravene the development plan in relation to building line from motorway is contradicted by Kildare County Councils own decision to grant permission for the Junction 14 service Station, with a setback of less than 50m meters.
- Kildare's County Council decision to refuse retention permission also includes accommodation works, access road, gateway and other works carried out by KCC / NRA or other contractors, which was part of a CPO process approved after a Statutory Public Inquiry.
- Documents attached in support of this appeal include:
  - Drawing No. 100 OS Location Map (Scale 1:2500)



- Copy of CDP Agreement
- Sample Equine passport details (1997)

## 6.2. Planning Authority Response

- None received

## 6.3. Observations

None

## 7.0 Assessment

### 7.1. Introduction

- 7.1.1. This appeal relates to the retention of an existing stud farm enterprise on lands at Mayfield, Monasterevin, Co. Kildare. This is the sixth application for retention submitted by the applicant, all previous applications having been refused by the planning authority and in the case of KCC Ref.No:19/1050, by An Bord Pleanála on appeal (ABP Ref:306109-20). The planning history of the site is set out in further detail in Section 4.0 of this report.
- 7.1.2. Having examined the application details and all other documentation on file, (including the submissions received in relation to the appeal) and having regard to the relevant planning policy, in particular the provisions of the Kildare County Development Plan 2023-2029, and to the planning history of the site, I consider that the main issues in this appeal are those cited in the refusal reasons. Appropriate assessment also merits consideration
- 7.1.3. The issues can be dealt with under the following headings:
- Principle of Development
  - Setback from Motorway
  - Appropriate Assessment.

## **7.2. Principle of Development**

- 7.2.1. The development comprises agricultural/equine structures within the rural area. As noted, the Kildare County Development Plan 2023-2029 states that, if land is not within an identified settlement and is not otherwise zoned as part of this Plan, or any Local Area Plan, the use of such land shall be deemed to be primarily agriculture. Therefore, I consider that equine-related structures in this rural location are acceptable in principle. In this regard, it is noted that the applicant has been granted planning permission on this landholding (KCC Reg. Ref. No: 19/361), for the construction of agricultural shed/stables, lunge ring and walking ring and for the removal/demolition of an existing storage building, stables building, lunge ring and walking ring.

## **7.3. Set back from Motorway**

- 7.3.1. This issue comprised the planning authority's reason for refusal and is the basis of the appeal.
- 7.3.2. The current and previous Kildare County Development Plans require a minimum setback of 91 metres from a motorway. The structures, for which retention permission has been sought, have all been constructed within this setback. As per the report of Kildare County Council's Roads, Transportation and Public Safety department, the nearest building is c25m from the M7, when taking the edge of the hard shoulder as the motorway edge.
- 7.4. It is the contention of the applicant, as set out in the grounds of appeal, that the development to be retained was in place for many years before the M7 motorway was even planned, with a more than adequate building line setback (100m +) to the N7 National primary route. While I am satisfied, based on the information / documentation submitted in support of the appeal, that the applicant has been involved in the bloodstock / equine industry at Mayfield for an extended period, I am not satisfied that the structures to be retained predate the construction of the M7 motorway.

- 7.5. As previously noted, permission for retention of these structures has been refused on six occasions by the planning authority between 2003 and 2019, the most recent application, KCC Ref: No19/1050 being refused by An Bord Pleanála on appeal (ABP-306109-19). In all cases the set back from the motorway has been cited for refusal.
- 7.6. The requirements of the current County Development Plan with respect to building line set back are explicit. Section 15.7.7 (Building Lines) states that where developments are permitted in rural areas along National roads, it is the policy of the Council to require compliance with a minimum setback of 91metres, as set out in Table 15.7 (Building Lines from Public Roads). The structures for retention do not comply with this requirement as they are all located within 91 metres of the motorway. I note that both the Roads, Transportation and Public Safety section of Kildare County Council and Transport Infrastructure Ireland have recommended that permission for this development be refused on this basis.
- 7.7. The appellant refers to Kildare County Councils decision to grant permission to Junction 14 Service Station with a setback of less than 50 metres to the edge of carriageway. Junction 14 Service Station is located c120m to the west of the appeal site. The separation distance of 48 metres, as detailed on the site location maps submitted with the appeal, refers to the distance between the main service building and the edge of the slip road as opposed to the motorway itself. While the distance between the main service building and the edge of the motorway would appear to be less than the required 91m (I estimate the distance to be in the region of 85 metres) I do not consider that this would set a precedent. I note that the two houses between the appeal site and the service station accord with the required 91 metre setback.
- 7.8. Notwithstanding, each planning application is assessed on its own merits. In this case the development for retention, contravenes the 91 metres setback distance contained within the Kildare County Development Plan 2023-2029. To permit this development would contravene the provisions of the Plan, would infringe the building line determined by the planning authority and would set an undesirable precedent for further such development in the county. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

## **7.9. Appropriate Assessment**

- 7.9.1. Having regard to the nature and scale of the development and to the nature of the receiving environment with no hydrological pathway to any European site, no appropriate assessment issues arise, and it is not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

## **8.0 Recommendation**

- 8.1. I recommend that retention permission be refused for this development for the following reason.

## **9.0 Reasons and Considerations**

1 Chapter 15, Section 15.7.7 (Building Lines) and Table 15.7 (Building Lines from Public Roads in Rural Areas) of the Kildare County Development Plan 2023-2029, state that it is the policy of the Council that developments in rural areas must be setback a minimum of 91 metres from motorways. The structures to be retained are located within 91 metres of the M7 Motorway. The development would therefore contravene the provisions of Section 15.7.7 (Building Lines) of the Kildare County Development Plan 2023-2029, would infringe a building line determined by the planning authority, would set an undesirable precedent for further similar development and would be contrary to the proper planning and sustainable development of the area.

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Lucy Roche  
Planning Inspector

9<sup>th</sup> of February 2023